

2005 DRAFTING REQUEST

Bill

Received: **02/03/2005**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Spencer Black (608) 266-7521**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Property - credits**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Black@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Homeowners property tax credit

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 02/08/2005	wjackson 02/13/2005		_____			S&L
/P1	jkreye 02/21/2005	wjackson 02/28/2005	rschluet 02/14/2005	_____	mbarman 02/14/2005		S&L
/P2			rschluet 02/28/2005	_____	sbasford 02/28/2005		S&L
/1	jkreye	wjackson	rschluet	_____	lnorthro	lnorthro	S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/02/2005 jkreye 05/18/2005	03/02/2005 wjackson 05/18/2005	03/02/2005 _____ _____ _____		03/02/2005	03/02/2005	
/2			chaugen 05/19/2005 _____ _____		sbasford 05/19/2005	sbasford 05/19/2005	

FE Sent For:

<END>

AA intro.

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/P1		/p2Wij 2/27	rschluet 02/14/2005		mbarman 02/14/2005		

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/?	jkreye	1/11/13					
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FE Sent For:

<END>

2-3-05

Spencer Block ——— bill that takes \$60,000 off the
property tax bill (see AB44)

1) keep that portion — everything else is out

2) create ~~an~~ a moratorium — joint tax money
to have 1 month to determine how to
pay for it

Rep Block will email some language

Kreye, Joseph

From: Rep.Black
Sent: Thursday, February 03, 2005 2:45 PM
To: Kreye, Joseph
Cc: Rep.Sherman
Subject: bill draft

Joe

Per our conversation, please draft

1. the \$60,000 homeowners credit as in AB 44

2. non-statutory language that within 60 days of publication of the Act, the Jt Survey Comm on Tax Exemptions shall report to the Legislature. The report shall recommend changes to the corporate income tax and repeal of exemptions to the sales tax that affect primarily corporations sufficient to provide funding for the homeowners credit. The report shall not include an increase in the corporate income tax rate.

notwithstanding section 13.52(5) and (6), the joint survey committee on tax exemptions shall prepare a report that shall recommend changes to the corporate income and franchise taxes imposed by this state, not including any increase in the corporate income or franchise tax rate, and repealing sales and use tax exemptions that primarily affect corporations. The committee shall submit the report as provided in the effective date of the act. no later than 60 days after the effective date of the act.

in order to provide funding for the credit,

1985/P1

SOON

2005 ASSEMBLY BILL 44

in 2-8-05
D-N

January 27, 2005 - Introduced by Representatives BLACK, BOYLE, TURNER, BERCEAU, ZEPNICK, POCAN, POPE-ROBERTS, CULLEN, PARISI and LEHMAN, cosponsored by Senators WIRCH, CARPENTER, COGGS and MILLER. Referred to Joint Survey Committee on Tax Exemptions.

re gen

1 AN ACT *to repeal* 20.566 (2) (am), 20.835 (3) (b), 79.10 (1) (b), 79.10 (1) (e), 79.10
2 (4), 79.10 (7m) (a), 79.10 (9) (b), 79.10 (9) (c) 2. and 79.14; *to renumber and*
3 *amend* 71.26 (2) (a) and 79.10 (9) (c) 1.; *to amend* 20.566 (2) (r), 20.835 (3) (q),
4 20.835 (3) (s), 41.41 (10) (c) 1., 70.11 (39), 71.07 (9) (b) 5., 74.09 (3) (b) 3., 79.10
5 (1m) (b), 79.10 (2), 79.10 (5), 79.10 (6m) (a), 79.10 (7m) (b) (title), 79.10 (7m) (b)
6 1., 79.10 (9) (bm), 79.10 (10) (title), 79.10 (10) (a), 79.10 (10) (bm) 1., 79.10 (10)
7 (bm) 2., 79.10 (11) (title), 79.10 (11) (b), 79.10 (11) (c), 79.11 (3) (b) and 565.02
8 (7); and *to create* 20.835 (3) (bm), 71.01 (5p), 71.01 (9b), 71.05 (6) (a) 21., 71.22
9 (3m), 71.22 (9b), 71.26 (2) (a) 6., 71.34 (1) (j), 71.42 (1p), 71.42 (4m), 71.45 (2)
10 (a) 16., 71.738 (3m), 71.80 (23) and 77.52 (2) (a) 13. of the statutes; **relating to:**
11 creating a homeowner's property tax credit, eliminating the school levy
12 property tax credit and the lottery and gaming property tax credit, ~~adding~~
13 ~~payments to related entities to federal taxable income for state income tax and~~
14 ~~franchise tax purposes, increasing the amount of the school property income tax~~

ASSEMBLY BILL 44

1 credit, imposing the sales tax on the lease of luxury boxes at sports facilities,
2 claiming the property tax exemption for computers, and making an
3 appropriation.

Analysis by the Legislative Reference Bureau***Property tax credits***

Under current law, a property owner in this state may claim a school levy property tax credit from the state based on the fair market value of the property and the property taxes levied by school districts located in the municipality in which the property is located. The amount of the credit is paid from the general fund.

Under current law, a person who owns property in this state that the person uses as a principal dwelling may claim the lottery and gaming property tax credit as a credit against the property taxes imposed on his or her principal dwelling. The amount of the credit is based on the fair market value of the person's principal dwelling and is paid from the lottery fund. ✓

This bill eliminates the school levy property tax credit and the lottery and gaming property tax credit and creates a homeowner's tax credit. Under the bill, a person who owns property in this state that the person uses as a principal dwelling may claim the homeowner's credit as a credit against the property taxes imposed on his or her principal dwelling. The amount of the credit is based on the fair market value of the person's principal dwelling, up to a fair market value of \$60,000. The credit is paid from both the general fund, in an amount equal to the amount paid for the school levy property tax credit, and the lottery fund.

School property tax income tax credit

Under current law, a person may claim an income tax credit based on the amount of property taxes or rent paid on the person's principal dwelling. The amount of the credit is equal to 12 percent of the first \$2,500 of property taxes or rent paid on the person's principal dwelling, or, for married persons filing separately, 12 percent of the first \$1,250 of property taxes or rent paid on the person's principal dwelling. Under the bill, with regard to rent paid on a person's principal dwelling, the amount of the credit is equal to 16 percent of the first \$2,500 of rent paid on the person's principal dwelling, or, for married persons filing separately, 16 percent of the first \$1,250 of rent paid on the person's principal dwelling.

Related entities

For purposes of calculating a taxpayer's state income tax or franchise tax liability, this bill requires a taxpayer to add the following amounts to the taxpayer's federal taxable income: any amount that the taxpayer deducted or excluded under the Internal Revenue Code for management and service fees, interest expenses and costs, intangible expenses and costs, and any other expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related entities.

ASSEMBLY BILL 44

This bill also authorizes the Department of Revenue (DOR) to allow the tax consequences of a transaction, as asserted by a taxpayer, even if DOR initially disallows the consequences by asserting the sham transaction doctrine or a related doctrine, if a taxpayer meets certain conditions. The conditions include the taxpayer's ability to demonstrate that the transaction had a valid, good faith business purpose other than tax avoidance, that the business purpose is commensurate with the transaction's tax benefit, and that the transaction had economic substance apart from the taxpayer's asserted tax benefit.

Also under the bill, a taxpayer is not required to add to the taxpayer's federal taxable income certain expenses or costs as specified in the bill if a number of conditions apply. The conditions include the following:

1. The transaction to which the expenses and costs apply did not have as its principal purpose tax avoidance.
2. The related entity to whom the taxpayer paid the expenses or costs paid, accrued, or incurred such amounts to a person who is not a related entity.
3. The related entity was subject to tax on its net income, and a measure of the tax included the expenses or costs received from the taxpayer.

Computers

Under current law, computers and certain computer-related equipment are exempt from the property tax imposed on the real and personal property of a business. Under the bill, no property owner may claim the property tax exemption for computers and computer-related equipment unless the property owner is a business that has less than \$5,000,000 in gross receipts, as determined by DOR, in the year that is two years prior to the year in which the property owner claims the exemption.

Luxury boxes

Under the bill, the furnishing of luxury boxes, sky boxes, and club seats at a sports facility is subject to a sales tax at the rate of 5 percent of the gross receipts from the furnishing of such boxes and seats.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.566 (2) (am) of the statutes is repealed.

2 **SECTION 2.** 20.566 (2) (r) of the statutes is amended to read:

ASSEMBLY BILL 44**SECTION 2**

1 20.566 (2) (r) ~~Lottery and gaming~~ Homeowner's tax credit administration.
2 From the lottery fund, the amounts in the schedule for the administration of the
3 ~~lottery and gaming~~ homeowner's tax credit.

4 **SECTION 3.** 20.835 (3) (b) of the statutes is repealed.

5 **SECTION 4.** 20.835 (3) (bm) of the statutes is created to read:

6 20.835 (3) (bm) *Homeowner's tax credit; general fund.* A sum sufficient to make
7 the payments under s. 79.10 (5) and (6m) (c), not to exceed \$469,305,000.

8 **SECTION 5.** 20.835 (3) (q) of the statutes is amended to read:

9 20.835 (3) (q) ~~Lottery and gaming~~ Homeowner's tax credit. From the lottery
10 fund, a sum sufficient to make the payments under s. 79.10 (5) and (6m) (c), not
11 including the amount paid under par. (bm).

12 **SECTION 6.** 20.835 (3) (s) of the statutes is amended to read:

13 20.835 (3) (s) ~~Lottery and gaming~~ Homeowner's tax credit; late applications.
14 From the lottery fund, a sum sufficient to make payments for the ~~lottery and gaming~~
15 homeowner's tax credit under s. 79.10 (10) (bm) and (bn).

16 **SECTION 7.** 41.41 (10) (c) 1. of the statutes is amended to read:

17 41.41 (10) (c) 1. Except as provided in par. (d), on or before each January 31,
18 the department shall pay to the treasurer of each taxation district specified in par.
19 (b), with respect to all land in the Kickapoo valley reserve and all land acquired by
20 the board on or before January 1 of the preceding year, an amount determined by
21 multiplying the estimated value of the land equated to the average level of
22 assessment in the taxation district by the aggregate gross general property tax rate,
23 exclusive of the rate that applies under s. 70.58 ~~and without respect to the school levy~~
24 ~~tax credit under s. 79.10,~~ that would apply to the land in that taxation district for that
25 year if it were taxable.

ASSEMBLY BILL 44

1 **SECTION 8.** 70.11 (39) of the statutes is amended to read:

2 70.11 **(39)** COMPUTERS. If the owner of the property fulfills the requirements
3 under s. 70.35 and if the property owner is a business that has less than \$5,000,000
4 in gross receipts, as determined by the department of revenue, in the year that is 2
5 years prior to the year in which the owner claims an exemption under this
6 subsection, mainframe computers, minicomputers, personal computers, networked
7 personal computers, servers, terminals, monitors, disk drives, electronic peripheral
8 equipment, tape drives, printers, basic operational programs, systems software, and
9 prewritten software. The exemption under this subsection does not apply to custom
10 software, fax machines, copiers, equipment with embedded computerized
11 components or telephone systems, including equipment that is used to provide
12 telecommunications services, as defined in s. 76.80 (3). For the purposes of s. 79.095,
13 the exemption under this subsection does not apply to property that is otherwise
14 exempt under this chapter.

15 **SECTION 9.** 71.01 (5p) of the statutes is created to read:

16 71.01 **(5p)** "Intangible expenses and costs" includes expenses, losses, and costs
17 for, related to, or directly or indirectly in connection with the direct or indirect
18 acquisition of, use of, maintenance or management of, ownership of, sale of, exchange
19 of, or any other direct or indirect disposition of intangible property to the extent that
20 such expenses, losses, and costs are allowed as deductions or costs to determine
21 federal taxable income under the Internal Revenue Code. For purposes of this
22 subsection, "expenses, losses, and costs" include losses related to or incurred directly
23 or indirectly in connection with factoring transactions and discounting transactions;
24 royalty, patent, technical, and copyright fees; licensing fees; and other similar
25 expenses and costs.

ASSEMBLY BILL 44

SECTION 10

1 **SECTION 10.** 71.01 (9b) of the statutes is created to read:

2 71.01 **(9b)** “Related entity” means any person related to a taxpayer as provided
3 under section 267, 318, or 1563 of the Internal Revenue Code during all or a portion
4 of the taxpayer’s taxable year.

5 **SECTION 11.** 71.05 (6) (a) 21. of the statutes is created to read:

6 71.05 **(6)** (a) 21. Any amount deducted or excluded under the Internal Revenue
7 Code for management and service fees, interest expenses and costs, intangible
8 expenses and costs, and any other expenses and costs directly or indirectly paid,
9 accrued, or incurred to, or in connection directly or indirectly with one or more direct
10 or indirect transactions with, one or more related entities.

11 **SECTION 12.** 71.07 (9) (b) 5. of the statutes is amended to read:

12 71.07 **(9)** (b) 5. For taxable years beginning after December 31, 1999, subject
13 to the limitations under this subsection a claimant may claim as a credit against, but
14 not to exceed the amount of, taxes under s. 71.02, 12% 12 percent of the first \$2,500
15 of property taxes or 16 percent of the first \$2,500 of rent constituting property taxes,
16 or 12% except that a married person filing separately may claim 12 percent of the first
17 \$1,250 of property taxes or 16 percent of the first \$1,250 of rent constituting property
18 taxes of a married person filing separately.

19 **SECTION 13.** 71.22 (3m) of the statutes is created to read:

20 71.22 **(3m)** “Intangible expenses and costs” includes expenses, losses, and costs
21 for, related to, or directly or indirectly in connection with the direct or indirect
22 acquisition of, use of, maintenance or management of, ownership of, sale of, exchange
23 of, or any other direct or indirect disposition of intangible property to the extent that
24 such expenses, losses, and costs are allowed as deductions or costs to determine
25 federal taxable income under the Internal Revenue Code. For purposes of this

ASSEMBLY BILL 44

subsection, “expenses, losses, and costs” include losses related to or incurred directly or indirectly in connection with factoring transactions and discounting transactions; royalty, patent, technical, and copyright fees; licensing fees; and other similar expenses and costs.

SECTION 14. 71.22 (9b) of the statutes is created to read:

71.22 (9b) “Related entity” means any person related to a taxpayer as provided under section 267, 318, or 1563 of the Internal Revenue Code during all or a portion of the taxpayer’s taxable year.

SECTION 15. 71.26 (2) (a) of the statutes is renumbered 71.26 (2) (a) (intro.) and amended to read:

71.26 (2) (a) (intro.) *Corporations in general.* The “net income” of a corporation means the gross income as computed under the Internal Revenue Code as modified under sub. (3) ~~minus and modified as follows:~~

1. Minus the amount of recapture under s. 71.28 (1di) ~~plus.~~

2. Plus the amount of credit computed under s. 71.28 (1), (3), (4), and (5) ~~minus.~~

3. Minus as provided under s. 71.28 (3) (c) 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income under this paragraph at the time that the taxpayer first claimed the credit ~~plus.~~

4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3g), (3n), (3t), and (5b) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership’s, limited liability company’s, or tax-option corporation’s income under s. 71.21 (4) or 71.34 (1) (g) ~~plus.~~

5. Plus the amount of losses from the sale or other disposition of assets the gain from which would be wholly exempt income, as defined in sub. (3) (L), if the assets

ASSEMBLY BILL 44**SECTION 15**

1 were sold or otherwise disposed of at a gain and minus deductions, as computed
2 under the Internal Revenue Code as modified under sub. (3), ~~plus,~~

3 ~~6. Plus~~ or minus, as appropriate, an amount equal to the difference between
4 the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or
5 otherwise disposed of in a taxable transaction during the taxable year, except as
6 provided in par. (b) and s. 71.45 (2) and (5).

7 **SECTION 16.** 71.26 (2) (a) 6. of the statutes is created to read:

8 71.26 (2) (a) 6. Plus any amount deducted or excluded under the Internal
9 Revenue Code for management and service fees, interest expenses and costs,
10 intangible expenses and costs, and any other expenses and costs directly or indirectly
11 paid, accrued, or incurred to, or in connection directly or indirectly with one or more
12 direct or indirect transactions with, one or more related entities.

13 **SECTION 17.** 71.34 (1) (j) of the statutes is created to read:

14 71.34 (1) (j) An addition shall be made for any amount deducted or excluded
15 under the Internal Revenue Code for management and service fees, interest
16 expenses and costs, intangible expenses and costs, and any other expenses and costs
17 directly or indirectly paid, accrued, or incurred to, or in connection directly or
18 indirectly with one or more direct or indirect transactions with, one or more related
19 entities.

20 **SECTION 18.** 71.42 (1p) of the statutes is created to read:

21 71.42 (1p) "Intangible expenses and costs" includes expenses, losses, and costs
22 for, related to, or directly or indirectly in connection with the direct or indirect
23 acquisition of, use of, maintenance or management of, ownership of, sale of, exchange
24 of, or any other direct or indirect disposition of intangible property to the extent that
25 such expenses, losses, and costs are allowed as deductions or costs to determine

ASSEMBLY BILL 44

1 federal taxable income under the Internal Revenue Code. For purposes of this
2 subsection, “expenses, losses, and costs” include losses related to or incurred directly
3 or indirectly in connection with factoring transactions and discounting transactions;
4 royalty, patent, technical, and copyright fees; licensing fees; and other similar
5 expenses and costs.

6 **SECTION 19.** 71.42 (4m) of the statutes is created to read:

7 71.42 (4m) “Related entity” means any person related to a taxpayer as provided
8 under section 267, 318, or 1563 of the Internal Revenue Code during all or a portion
9 of the taxpayer’s taxable year.

10 **SECTION 20.** 71.45 (2) (a) 16. of the statutes is created to read:

11 71.45 (2) (a) 16. By adding to federal taxable income any amount deducted or
12 excluded under the Internal Revenue Code for management and service fees,
13 interest expenses and costs, intangible expenses and costs, and any other expenses
14 and costs directly or indirectly paid, accrued, or incurred to, or in connection directly
15 or indirectly with one or more direct or indirect transactions with, one or more
16 related entities.

17 **SECTION 21.** 71.738 (3m) of the statutes is created to read:

18 71.738 (3m) “Related entity” means any person related to a taxpayer as
19 provided under section 267, 318, or 1563 of the Internal Revenue Code during all or
20 a portion of the taxpayer’s taxable year.

21 **SECTION 22.** 71.80 (23) of the statutes is created to read:

22 71.80 (23) TRANSACTIONS. (a) Subject to par. (b), if the department asserts the
23 sham transaction doctrine, or any other related tax doctrine, to disallow the tax
24 consequences, as asserted by the taxpayer, of a transaction, the department may
25 allow the tax consequences, as asserted by the taxpayer, of the transaction, if the

ASSEMBLY BILL 44**SECTION 22**

1 taxpayer demonstrates by clear and convincing evidence that the transaction had a
2 valid, good faith, business purpose other than tax avoidance and had economic
3 substance apart from any tax benefit asserted by the taxpayer.

4 (b) For all instances in which the department disallows the tax consequences,
5 as asserted by the taxpayer, of a transaction, the department may allow the tax
6 consequences, as asserted by the taxpayer, of the transaction, if the taxpayer
7 demonstrates by clear and convincing evidence that the transaction's nontaxable
8 business purpose, as asserted by the taxpayer, is commensurate with the
9 transaction's tax benefit, as asserted by the taxpayer.

10 (c) The adjustments under ss. 71.05 (6) (a) 21., 71.26 (2) (a) 6., 71.34 (1) (j), and
11 71.45 (2) (a) 16. shall not apply to any expenses or costs if all of the following apply
12 to the expenses or costs:

13 1. The transaction to which the expenses or costs are related did not have tax
14 avoidance as its principal purpose.

15 2. The related entity to whom the taxpayer paid interest expenses or costs,
16 intangible expenses, or management or service fees during the taxable year directly
17 or indirectly paid, accrued, or incurred such amounts to a person who is not a related
18 entity. For purposes of this subdivision, "interest" means interest on a debt for which
19 the taxpayer is the guarantor, if the interest rate is the market rate in effect at the
20 time of the debt's origination, but excludes interest that is paid in connection with
21 any debt that is incurred to acquire the taxpayer's assets or stock under section 368
22 of the Internal Revenue Code.

23 3. The related entity was subject to tax on its net income in this state, or any
24 state, U.S. possession, or foreign country; a measure of the tax paid included the
25 interest income, intangible income, or management or service fees received from the

ASSEMBLY BILL 44

1 taxpayer; and the tax rate applied to the interest income, intangible income, or
2 management or service fees was not less than 3 percentage points below the tax rate
3 that would have applied under s. 71.27. For purposes of this subdivision, “any state,
4 U.S. possession, or foreign country” does not include any state, U.S. possession, or
5 foreign country under the laws of which the taxpayer files or could have elected to
6 file with the related entity, or the related entity files or could have elected to file with
7 another entity, a combined income tax report or return, a consolidated income tax
8 report or return, or any other report or return that is due because of the imposition
9 of a tax that is measured on or by income, if the report or return results in eliminating
10 the tax effects of transactions directly or indirectly between either the taxpayer and
11 the related entity or between the related entity and another entity.

12 **SECTION 23.** 74.09 (3) (b) 3. of the statutes is amended to read:

13 74.09 (3) (b) 3. The tax levied on the property by the school district where the
14 property is located minus the credit under s. 79.10 (4) allocable to the property, for
15 the previous year and the current year, and the percentage change in that net tax
16 between those years.

17 **SECTION 24.** 77.52 (2) (a) 13. of the statutes is created to read:

18 77.52 (2) (a) 13. The furnishing of luxury boxes, sky boxes, and club seats at
19 a sports facility, as defined in s. 167.32 (1) (f), for dues, fees, or other considerations,
20 if the sale of admissions to sporting events at the facility is subject to the tax imposed
21 under this section.

22 **SECTION 25.** 79.10 (1) (b) of the statutes is repealed.

23 **SECTION 26.** 79.10 (1) (e) of the statutes is repealed.

24 **SECTION 27.** 79.10 (1m) (b) of the statutes is amended to read:

ASSEMBLY BILL 44

SECTION 27

1 79.10 (1m) (b) Counties and municipalities shall submit to the department of
2 revenue all data related to the ~~lottery and gaming~~ homeowner's tax credit and
3 requested by the department of revenue.

4 **SECTION 28.** 79.10 (2) of the statutes is amended to read:

5 79.10 (2) NOTICE TO MUNICIPALITIES. On or before December 1 of the year
6 preceding the distribution under sub. (7m) (a), the department of revenue shall
7 notify the clerk of each town, village, and city of the estimated fair market value, as
8 determined under sub. (11), to be used to calculate the ~~lottery and gaming~~
9 homeowner's tax credit under sub. (5) ~~and of the amount to be distributed to it under~~
10 ~~sub. (7m) (a) on the following 4th Monday in July. The anticipated receipt of such~~
11 ~~distribution shall not be taken into consideration in determining the tax rate of the~~
12 ~~municipality but shall be applied as tax credits.~~

13 **SECTION 29.** 79.10 (4) of the statutes is repealed.

14 **SECTION 30.** 79.10 (5) of the statutes is amended to read:

15 79.10 (5) ~~LOTTERY AND GAMING~~ HOMEOWNER'S TAX CREDIT. Each municipality
16 shall receive, from the ~~appropriation~~ appropriations under s. 20.835 (3) (bm) and (q),
17 an amount determined by multiplying the school tax rate by the estimated fair
18 market value, ~~not exceeding the value as~~ determined under sub. (11), but not to
19 exceed \$60,000, of every principal dwelling that is located in the municipality and
20 for which a claim for the credit under sub. (9) (bm) is made by the owner of the
21 principal dwelling.

22 **SECTION 31.** 79.10 (6m) (a) of the statutes is amended to read:

23 79.10 (6m) (a) Except as provided in pars. (b) and (c), if the department of
24 administration or the department of revenue determines by October 1 of the year of
25 any distribution under ~~subs. (4) and~~ sub. (5) that there was an overpayment or

ASSEMBLY BILL 44

1 underpayment made in that year's distribution by the department of administration
2 to municipalities, as determined under subs. (4) and sub. (5), because of an error by
3 the department of administration, the department of revenue or any municipality,
4 the overpayment or underpayment shall be corrected as provided in this paragraph.
5 Any overpayment shall be corrected by reducing the subsequent year's distribution,
6 as determined under subs. (4) and sub. (5), by an amount equal to the amount of the
7 overpayment. Any underpayment shall be corrected by increasing the subsequent
8 year's distribution, as determined under subs. (4) and sub. (5), by an amount equal
9 to the amount of the underpayment. Corrections shall be made in the distributions
10 to all municipalities affected by the error. Corrections shall be without interest.

11 **SECTION 32.** 79.10 (7m) (a) of the statutes is repealed.

12 **SECTION 33.** 79.10 (7m) (b) (title) of the statutes is amended to read:

13 79.10 (**7m**) (b) (title) *~~Lottery and gaming~~ Homeowner's tax credit.*

14 **SECTION 34.** 79.10 (7m) (b) 1. of the statutes is amended to read:

15 79.10 (**7m**) (b) 1. The amount determined under sub. (5) with respect to claims
16 filed for which the town, village, or city has furnished notice under sub. (1m) by
17 March 1 shall be distributed from the appropriation appropriations under s. 20.835
18 (3) (bm) and (q) by the department of administration on the 4th Monday in March.

19 **SECTION 35.** 79.10 (9) (b) of the statutes is repealed.

20 **SECTION 36.** 79.10 (9) (bm) of the statutes is amended to read:

21 79.10 (**9**) (bm) *~~Lottery and gaming~~ Homeowner's tax credit.* Except as provided
22 in ss. 79.175 and 79.18, a ~~lottery and gaming~~ homeowner's tax credit shall be
23 allocated to every principal dwelling for which a credit is claimed under sub. (10) in
24 an amount determined by multiplying the estimated fair market value of the

ASSEMBLY BILL 44**SECTION 36**

1 principal dwelling, ~~not exceeding the value as~~ determined under sub. (11), but not
2 to exceed \$60,000, by the school tax rate.

3 **SECTION 37.** 79.10 (9) (c) 1. of the statutes is renumbered 79.10 (9) (c) and
4 amended to read:

5 79.10 **(9)** (c) The ~~lottery and gaming~~ homeowner's tax credit under par. (bm)
6 shall reduce the property taxes otherwise payable on property that is eligible for that
7 credit and if the property owner completes the information required under sub. (10)
8 (a) or (b).

9 **SECTION 38.** 79.10 (9) (c) 2. of the statutes is repealed.

10 **SECTION 39.** 79.10 (10) (title) of the statutes is amended to read:

11 79.10 **(10)** (title) CLAIMING THE ~~LOTTERY AND GAMING~~ HOMEOWNER'S TAX CREDIT.

12 **SECTION 40.** 79.10 (10) (a) of the statutes is amended to read:

13 79.10 **(10)** (a) Beginning with property taxes levied in ~~1999~~ 2004, the owner of
14 a principal dwelling may claim the credit under sub. (9) (bm) by applying for the
15 credit on a form prescribed by the department of revenue. A claimant shall attest
16 that, as of the certification date, the claimant is an owner of property and that such
17 property is used by the owner in the manner specified under sub. (1) (dm). The
18 certification date is January 1 of the year in which the property taxes are levied. The
19 claimant shall file the application for the ~~lottery and gaming~~ homeowner's tax credit
20 with the treasurer of the county in which the property is located or, if the property
21 is located in a city that collects taxes under s. 74.87, with the treasurer of the city in
22 which the property is located. Subject to review by the department of revenue, a
23 treasurer who receives a completed application shall direct that the property
24 described in the application be identified on the next tax roll as property for which
25 the owner is entitled to receive a ~~lottery and gaming~~ homeowner's tax credit. A claim

ASSEMBLY BILL 44

1 that is made under this paragraph is valid for as long as the property is eligible for
2 the credit under sub. (9) (bm).

3 **SECTION 41.** 79.10 (10) (bm) 1. of the statutes is amended to read:

4 79.10 **(10)** (bm) 1. A person who is eligible for a credit under sub. (9) (bm) but
5 whose property tax bill does not reflect the credit may claim the credit by applying
6 to the treasurer of the taxation district in which the property is located for the credit
7 under par. (a) by January 31 following the issuance of the person's property tax bill.
8 The treasurer shall compute the amount of the credit; subtract the amount of the
9 credit from the person's property tax bill; notify the person of the reduced amount of
10 the property taxes due; issue a refund to the person if the person has paid the
11 property taxes in full; and enter the person's property on the next tax roll as property
12 that qualifies for a ~~lottery and gaming~~ homeowner's tax credit. Claims made under
13 this subdivision are valid for as long as the property is eligible for the credit under
14 sub. (9) (bm).

15 **SECTION 42.** 79.10 (10) (bm) 2. of the statutes is amended to read:

16 79.10 **(10)** (bm) 2. A person who may apply for a credit under subd. 1. but who
17 does not timely apply for the credit under subd. 1. may apply to the department of
18 revenue no later than October 1 following the issuance of the person's property tax
19 bill. Subject to review by the department, the department shall compute the amount
20 of the credit; issue a check to the person in the amount of the credit; and notify the
21 treasurer of the county in which the person's property is located or the treasurer of
22 the taxation district in which the person's property is located, if the taxation district
23 collects taxes under s. 74.87. The treasurer shall enter the person's property on the
24 next tax roll as property that qualifies for a ~~lottery and gaming~~ homeowner's tax

ASSEMBLY BILL 44

1 credit. Claims made under this subdivision are valid for as long as the property is
2 eligible for the credit under sub. (9) (bm).

3 **SECTION 43.** 79.10 (11) (title) of the statutes is amended to read:

4 79.10 **(11)** (title) ~~LOTTERY AND GAMING~~ HOMEOWNER'S TAX CREDIT ESTIMATED FAIR
5 MARKET VALUE.

6 **SECTION 44.** 79.10 (11) (b) of the statutes is amended to read:

7 79.10 **(11)** (b) Before October 16, the department of administration shall
8 determine the total funds available for distribution under the ~~lottery and gaming~~
9 homeowner's tax credit in the following year and shall inform the joint committee on
10 finance of that total. Total funds available for distribution shall be \$469,305,000
11 from s. 20.835 (3) (bm) plus all moneys projected to be transferred to the lottery fund
12 under ss. 20.455 (2) (g) and 20.505 (8) (am), (g), and (jm) and all existing and projected
13 lottery proceeds and interest for the fiscal year of the distribution, less the amount
14 estimated to be expended under ss. 20.455 (2) (r), 20.566 (2) (r), and 20.835 (2) (q) and
15 less the required reserve under s. 20.003 (5). The joint committee on finance may
16 revise the total amount to be distributed if it does so at a meeting that takes place
17 before November 1. If the joint committee on finance does not schedule a meeting
18 to take place before November 1, the total determined by the department of
19 administration shall be the total amount estimated to be distributed under the
20 ~~lottery and gaming~~ homeowner's tax credit in the following year.

21 **SECTION 45.** 79.10 (11) (c) of the statutes is amended to read:

22 79.10 **(11)** (c) Before November 1, the department of administration shall
23 inform the department of revenue of the total amount available for distribution
24 under the ~~lottery and gaming~~ homeowner's tax credit in the following year. Before
25 December 1, the department of revenue shall calculate, to the nearest \$100, the

ASSEMBLY BILL 44

1 estimated fair market value necessary to distribute the total amount available for
2 distribution under the ~~lottery and gaming~~ homeowner's tax credit in the following
3 year.

4 **SECTION 46.** 79.11 (3) (b) of the statutes is amended to read:

5 79.11 (3) (b) Notwithstanding ss. 74.11 (2) (b) and 74.12 (2) (b), the ~~lottery and~~
6 ~~gaming~~ homeowner's tax credit shall be deducted in its entirety from the first
7 installment. This paragraph does not apply to the payment of taxes in installments
8 under s. 74.87.

9 **SECTION 47.** 79.14 of the statutes is repealed.

10 **SECTION 48.** 565.02 (7) of the statutes is amended to read:

11 565.02 (7) Not later than March 1 of each year, the department shall submit
12 to the joint committee on finance a report that includes an estimate for that fiscal
13 year and for the subsequent fiscal year of the gross revenues from the sale of lottery
14 tickets and lottery shares, the total amount paid as prizes and the prize payout ratio
15 for each type of lottery game offered, and an evaluation of the effect of prize payout
16 ratios of lottery games on lottery sales, lottery operating costs and on maximizing the
17 revenue available for the ~~lottery and gaming property~~ homeowner's tax credit. If,
18 within 14 working days after the date on which the committee receives the report,
19 the cochairpersons of the committee notify the department that the committee has
20 scheduled a meeting for the purpose of reviewing the department's proposed prize
21 payouts, the department may proceed with its plans for the prize payouts for the
22 subsequent fiscal year only upon approval of the plans by the committee. If the
23 cochairpersons of the committee do not notify the department within 14 working
24 days after the date on which the committee receives the report that the committee
25 has scheduled a meeting for the purpose of reviewing the department's proposed

ASSEMBLY BILL 44**SECTION 48**

1 prize payouts, the department's plans for the prize payouts for the subsequent fiscal
2 year are considered approved by the committee.

SECTION 49. Nonstatutory provisions.

3
4 (1) HOMEOWNER'S TAX CREDIT. An application for the lottery and gaming credit
5 under section 79.10 (10) of the statutes, 2003 stats., shall be considered to be an
6 application for the homeowner's tax credit under section 79.10 (10) of the statutes,
7 as affected by this act, and any valid claim for the lottery and gaming credit under
8 section 79.10 (10) of the statutes, 2003 stats., shall be considered to be a valid claim
9 for the homeowner's tax credit under section 79.10 (10) of the statutes, as affected
10 by this act.

SECTION 50. Initial applicability.

11
12 (1) HOMEOWNER'S TAX CREDIT. The treatment of sections 20.566 (2) (am) and (r),
13 20.835 (3) (b), (bm), (q), and (s), 41.41 (10) (c) 1., 74.09 (3) (b) 3., 79.10 (1) (b) and (e),
14 (1m) (b), (2), (4), (5), (6m) (a), (7m) (a) and (b) (title) and 1., (9) (b), (bm), and (c) 1. and
15 2., (10) (title) and (a), (bm) 1. and 2., and (11) (title), (b), and (c), 79.11 (3) (b), 79.14,
16 and 565.02 (7) of the statutes first applies to property taxes levied in 2005.

17 (2) COMPUTERS. The treatment of section 70.11 (39) of the statutes first applies
18 to the property tax assessments as of January 1, 2005.

19 (3) SCHOOL PROPERTY INCOME TAX CREDIT. The treatment of section 71.07 (9) (b)
20 5. of the statutes first applies to taxable years beginning on January 1, 2005.

21 (4) RELATED ENTITIES. The treatment of sections 71.01 (5p) and (9b), 71.05 (6)
22 (a) 21., 71.22 (3m) and (9b), 71.34 (1) (j), 71.42 (1p) and (4m), 71.45 (2) (a) 16., 71.738
23 (3m), and 71.80 (23) of the statutes, the renumbering and amendment of section
24 71.26 (2) (a), and the creation of section 71.26 (2) (a) 6. of the statutes first apply to
25 taxable years beginning on January 1, 2005.

ASSEMBLY BILL 44

1 (5) LUXURY BOXES. The treatment of sections 77.52 (2) (a) 13. of the statutes first
2 applies to transactions entered into on the effective date of this subsection.

3 (END)

Insert 18-10

NONSTAT'S
→ (B) ^{REPORT} (15)
→ (#)

of the statutes

Notwithstanding section 13052(5) and (6) ^{the joint}

survey committee on tax exemptions shall prepare a report that, ^{in order} to provide funding for the homeowner's tax credit under section 7900(10) ^{of the statutes}, as affected by this act, recommends changes to the corporate ^{income} and franchise ^{taxes} imposed by this state, not including any increase in corporate income or franchise tax rates, and repealing certain ^{sales} and use tax exemptions that primarily affect corporations. The committee shall submit the report to the legislature no later than 60 days after the effective date of this subsection.

1985 P1dn

LRB-0576/P1dn
JK:wlj:ch

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

November 8, 2004

¶ Please also note that, although ^{revenue} revenue from ^{the} lottery ^{fund} is not subject to the uniformity clause, ^{revenue} revenue from the general fund ^{is} is. Therefore, using general fund revenue to pay for a portion of a tax credit that is provided only to homeowners may also violate the ^{uniformity} uniformity clause.

Representative Black:

Please review this draft carefully to ensure that it is consistent with your intent.

Also, please be aware that the homeowner's tax credit, as created in the bill, ~~and the computer property tax exemption as amended in the bill~~, could be challenged as a violation of the uniformity clause of article VIII, section 1, of the Wisconsin Constitution. The uniformity clause requires that the taxation of real property be uniform.

The Wisconsin Supreme Court has held that reducing the taxes on some property but not exempting the property is a partial exemption that violates the uniformity clause. See *State ex rel. La Follette v. Torphy*, 85 Wis. 2d 94, 105-108 (1978) and *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 427-428 (1859). A court could find that the homeowner's tax credit created in the bill creates a partial exemption because it disproportionately reduces the tax liability of homeowners. In other words, because the credit is based on the first \$60,000 of property value, a homeowner whose property is valued at \$60,000, for example, will receive a credit that represents a greater percentage of his or her total tax liability than a homeowner whose property value exceeds \$60,000. See also, 52 Opinion of the Attorney General 143 (1963) which opines that exempting the first \$3,750 of the assessed value of homesteads creates a partial exemption.

With regards to the computer property tax exemption, a court could find that applying the exemption only to computers owned by certain businesses, based on gross receipts, creates an unreasonable classification for property tax purposes and, therefore, violates the uniformity clause. See *Gottlieb*.

Although I am not certain how a court would rule on a constitutional challenge to the bill, should it become law, you should be aware of possible challenges to the bill. Please contact me if you have any questions.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1985/P1dn
JK:wlj:rs

February 14, 2005

Representative Black:

Please review this draft carefully to ensure that it is consistent with your intent.

Also, please be aware that the homeowner's tax credit, as created in the bill, could be challenged as a violation of the uniformity clause of article VIII, section 1, of the Wisconsin Constitution. The uniformity clause requires that the taxation of real property be uniform.

The Wisconsin Supreme Court has held that reducing the taxes on some property but not exempting the property is a partial exemption that violates the uniformity clause. See *State ex rel. La Follette v. Torphy*, 85 Wis. 2d 94, 105-108 (1978) and *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 427-428 (1859). A court could find that the homeowner's tax credit created in the bill creates a partial exemption because it disproportionately reduces the tax liability of homeowners. In other words, because the credit is based on the first \$60,000 of property value, a homeowner whose property is valued at \$60,000, for example, will receive a credit that represents a greater percentage of his or her total tax liability than a homeowner whose property value exceeds \$60,000. See also, 52 Opinion of the Attorney General 143 (1963) which opines that exempting the first \$3,750 of the assessed value of homesteads creates a partial exemption.

Please also note that, although revenue from the lottery fund is not subject to the uniformity clause, revenue from the general fund is. Therefore, using general fund revenue to pay for a portion of a tax credit that is provided only to homeowners may also violate the uniformity clause.

Although I am not certain how a court would rule on a constitutional challenge to the bill, should it become law, you should be aware of possible challenges to the bill. Please contact me if you have any questions.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us